

## **REMARKS**

Claims 1-21, 22-28 and 31 are currently pending in the application. Claims 1, 9, 17, 20, 23, 27 and 31 are in independent form.

Claims 1, 9, 17, 20, 23, 27 and 31 stand rejected under 35 U.S.C. §102(b) as being anticipated by the Richelsoph patent. Reconsideration of the rejection under 35 U.S.C. § 102(b), as anticipated by the Richelsoph patent, as applied to the claims is respectfully requested. Anticipation has always been held to require absolute identity in structure between the claimed structure and a structure disclosed in a single reference.

In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) it was stated: "For prior art to anticipate under §102 it has to meet every element of the claimed invention."

In Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989) it was stated: "Every element of the claimed invention must be literally present, arranged as in the claim."

The Office Action has held that the Richelsoph patent discloses a screw and rod fixation assembly comprising a screw 12" with a screw head 40 having fixing means 70, 14" for fixing the screw 12" from movement relative to the assembly. The fixing means includes an inner surface wall having a gripping portion and a non-gripping portion. The assembly further includes a substantially annular ring 70 including an edge portion extending about a center axis and having a frustoconical surface tapering outwardly toward the edge portion for engaging the screw head 40 while allowing a portion of the screw 12" to pass therethrough as shown in Figure 7. The rod seating means 16 is operatively engaged with the fixing means for seating a rod therein including at least one flexible portion 80 capable of being compressed against a rod

seated within the rod seating means. Locking means 22 is for use in securing and engaging the rod and rod seating means.

When read more specifically, the Richelsoph patent does not disclose the assemblies of the presently pending independent claims. Specifically, there is no disclosure for a single fixing means that automatically and compressively fixes a screw from movement relative to the assembly. Instead what is disclosed in the Richelsoph patent is that the screw is screwed into place, then a rod seating member is disposed/snapped over the head portion of the screw. It is this snapping operation that maintains the screw in place. This is specifically disclosed in column 6, lines 27-47. In the embodiment referred to in the Office Action, which is disclosed in column 7, lines 15-45, an insert 70 is disclosed. The insert 70 is a separate element having a seat 44''' for seating the screw head therein. The insert 70 is moveable, within the internal portion 72, between a locked and an unlocked position. As stated in the Richelsoph patent at column 7, lines 45 through column 8, line 23, there is disclosed that the insert 70 includes a base portion and a plurality of flexible arms 80 that extend therefrom combining with the base portion to form a pocket. These arms are shown in Figure 5. The insert is inserted within the body of the spinal implant fixation assembly and the arms are designed to hold the screw in place. The Richelsoph patent also discloses a rod receiving mechanism 14, including two arms. The two arms are in a U-shaped configuration. However, there is no disclosure that the arms themselves can automatically and compressively hold the screw head in place. The Richelsoph patent generally discloses a mechanism using U-shaped arms for holding the rod in place. There is no disclosure for an automatic and compressive fixing means for compressively holding the screw head in place via an inner passageway, including an inner surface wall having gripping and non-gripping portions. Instead, the screw head must be locked in place utilizing separate means, namely, the rod seating member. Alternatively, the screw element can be held in place by using an outer sleeve that is pushed down with an instrument. The outer sleeve locks the screw in place. There is no disclosure for the screw to be held in place without the use of an additional element. In contradistinction, the presently pending independent claims recite that the fixing

means automatically holds the screw in place. This is accomplished by the material used to create the fixing means. Additionally, the diameter of the inner passageway of the fixing means is such that it compressively and automatically holds the screw head in place upon insertion of the screw head.

With regard to independent claims 20 and 23, the Office Action has held that the Richelsoph patent teaches a rod seating means 70 with the top portion as shown in Figure 9 that is considered to be a body portion with tapered flexible portion 80 extending therefrom. When read more specifically, the specification discloses at column 7, lines 45-59:

"Figure 9 shows an enlarged cross-sectional view of the insert 70 made in accordance with the present invention. The seat 44'" more particularly includes a base portion 78 and a plurality of flexible arms 80 extending therefrom combining with the base portion 78 to form a pocket. The arms 80 define flexible walls of the pocket extending from the base portion 78.

At least one of the arms 80 includes a hinged portion 82 allowing for outward deflection of the arm 80. The hinged portion, as shown in Figure 9 can be a recess cut into the base portion 78 adjacent the arm 80 to allow for increased outward flexibility of the arm 80, which includes the hinged portion 82. This allows for increased ease of insertion of the screw head 44' into the pocket."

Thus, the figure being referred to in the Office Action relates to a pocket for the screw head, not a rod receiving device capable of seating a rod therein. It is respectfully submitted that there is no disclosure in the Richelsoph patent for the rod receiving device and locking member of the presently pending independent claims. Since the Richelsoph patent does not disclose the devices of the presently pending independent claims, the claims are patentable over the Richelsoph patent and reconsideration of the rejection is respectfully requested.

The remaining dependent claims not specifically discussed herein are ultimately dependent upon the independent claims. References as applied against these dependent claims do not make up for the deficiencies of those references as discussed above. The prior art references do not disclose the characterizing features of the independent claims discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

It is respectfully requested that the present amendment be entered in order to place the application in condition for allowance or at least in better condition for appeal. The application is placed in condition for allowance as it addresses and resolves each and every issue that remains pending. Claims have also been amended to clearly distinguish over the prior art. The application is made at least in better condition for appeal as the amendment removes many issues thereby simplifying the issues on appeal. Further, the claims have been amended to more specifically define the invention while raising no new issues that would require any further searching. Rather, the amendments have been made in view of comments made in the Office Action that clearly distinguish the presently pending claims over the cited prior art. Hence, it is respectfully requested that the amendment be entered.

This amendment could not have been made earlier as the amendment further defines the claims over the prior art in accordance with the suggestion made in the Office Action, the suggestion first being made in the outstanding Office Action. Hence, since there remain no further issues to be resolved, it is respectfully requested that the present amendment be entered.

In conclusion, it is respectfully requested that the present amendment be entered in order to place the application in condition for allowance, which allowance is respectfully requested.

The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

KOHN & ASSOCIATES, PLLC



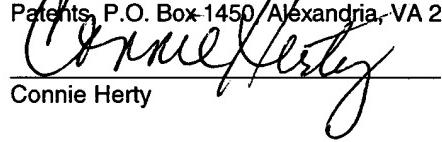
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